

REVIEW OF THE DEPARTMENT'S RETALIATION POLICY

Conducted By
Office of the Inspector General

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BACKGROUND

The Department's Retaliation Policy is contained in Volume 1, Section 272 of the Department Manual. That policy provides, in pertinent part:

*Every employee of the Los Angeles Police Department has the right to work in a professional atmosphere without fear of retaliation that may result from bringing a formal or informal complaint alleging any type of misconduct. . . . It is, therefore, every employee's responsibility to refrain from acts of retaliation and to report acts of retaliation. . . . It is the express duty and responsibility of commanding officers and supervisors to ensure that: (1) the officers and support staff under their command neither perpetrate nor perpetuate any form of retaliation; (2) no officer or employee experiences any form of retaliation; (3) no officer or employee acts to inhibit the implementation of this policy; and (4) acts of retaliation are reported. . . . **Supervisors have a special responsibility to ensure that their actions are not retaliatory and that they act to effectively prohibit others from engaging in retaliatory acts. The Department prohibits acts of retaliation in any form and employees who commit the same are subject to disciplinary actions up to and including termination. . . .***

In dissecting this policy, it is important to note that it is comprised of two parts. First and foremost, it squarely addresses the issue of retaliation and makes clear that such conduct cannot and will not be tolerated. Secondly, and equally important, it places a special burden on supervisors and commanding officers to ensure the policy is carried out and to be proactive when an event occurs that may predictably lead to retaliation. For example, one employee alleging misconduct against another lends itself to a situation where coworkers may "choose sides" and can easily slide into retaliatory acts, absent proactive management and supervisory preventative intervention. Therefore, the OIG's analysis focused on **both** prongs of the retaliation policy to determine if the Department's policy in this critical area was being carried out fully and completely.

METHODOLOGY

In preparing this Report, the OIG reviewed eleven of the seventeen retaliation complaint investigations that were initiated since July 1, 2001, when the Department began classifying retaliation as a distinct category of misconduct. The OIG chose these eleven files to review because, at the time of this writing, all eleven cases had been completed, the Letter of Transmittal (LOT) had been prepared and served, and the Department had closed the case.¹

¹ An additional complaint (CF 02-4007) was listed on the Department's Retaliation Report as open but was recently closed out as "Non-Disciplinary." Since the face sheet of the complaint alleged sexual harassment and hostile work environment, allegations not normally qualifying for "Non-Disciplinary" consideration, the OIG forwarded this

Two of the eleven retaliation complaints, both of which were adjudicated as unfounded, involved the same supervisor, who has since resigned from the Department.

The OIG evaluated whether the investigation addressed any environmental and/or other workplace issues raised during the investigation, and whether the LOT analyzed the supervisor's performance in addressing or preventing workplace issues raised by the investigation. In addition, the OIG reviewed litigation matters initiated by current or former Department employees alleging retaliation since July 2001, that had either been settled or a verdict reached against the City in the amount of \$150,000² or greater. These litigation matters were reviewed to assess what if any lessons could be learned to assist the Department in implementing its Retaliation Policy and investigating allegations of retaliation.

An in-depth discussion of the OIG's review and analysis of each of the eleven retaliation complaints is contained in Appendix A to this Report. Appendix A is broken down between those investigations with which the OIG had identified concerns (6), and those we did not (5).

As a side note, of the eleven complaint investigations the OIG reviewed, the complainants in three cases³ subsequently filed civil rights/employment discrimination lawsuits against the City. Two have since been dismissed, one very recently. Another case settled for \$1,100,000. In that case, as discussed in more detail in Appendix A, the OIG took issue with the related complaint investigation.

REVIEW OF COMPLETED COMPLAINT INVESTIGATIONS

The OIG's review of the 11 completed complaint investigations revealed that allegations of retaliation generally arose in two distinct contexts: 1) either in response to an isolated supervisory action; or, 2) as the culmination of several incidents which the employee alleged were part of a pattern of a retaliatory and/or hostile work environment created by the employee's supervisors.

In the cases of isolated supervisory action, the complaining employee disagreed with a disciplinary or other negative employment action which had been taken by the accused supervisor(s), whether it involved a negative comment sheet, initiating a complaint for misconduct, or failing to select the complainant for a position. As a general matter, each investigation revealed that the supervisor's actions appear to have been warranted, though in several instances the supervisor's particular choice of words or tone may have contributed to the employee's perception of retaliation.

The complaints that arose in the context of ongoing workplace and/or environmental issues, including accusations of poor interpersonal skills and supervisory favoritism toward particular employees, raised additional issues. Based on the OIG's review of the Department's investigations, a number of the cases revealed issues in the workplace and/or environment which

complaint to PSB for further review. The OIG has since been informed by PSB that this complaint was referred to the Police Commission Discrimination Unit (PCDU) to investigate the workplace environmental issues.

² It is the OIG's opinion, based on the collective experience of this Office, that settlements below this figure are often settled for economic rather than merit-based considerations.

³ CF #01-5250, CF #01-5445, and CF #02-0148.

were not adequately addressed in the LOT. In most cases, the OIG believed that the LOT failed to address what role, if any, supervisor(s) may have played in contributing to the problem environment, or the LOT failed to suggest remedial action so as to prevent future perceptions of retaliation in the particular workplace at issue.

On a positive note, the OIG did find that in one complaint (CF # 01-5335), the Department did an adequate job of investigating allegations of retaliation which involved anonymous acts of harassment, including the posting of the complainant's lawsuit on a stationhouse door, sending a fellow employee a copy of the complainant's lawsuit through interoffice mail, and leaving a copy of pink women's underwear in the complainant's mailbox. Though the investigation ultimately failed to reveal the identity of the perpetrators, the OIG believes the LOT adequately assessed the myriad environmental issues leading to the initiation of the complaint. This was the third complaint initiated by the complainant and/or the Department on his behalf, the earliest of which was filed three years earlier,⁴ in which issues of hostile work environment and/or retaliation had been raised. However, this was the first complaint to adequately assess the workplace factors surrounding the complaint and recognize that the actions of the involved supervisors may have contributed to an environment in which employees felt emboldened to engage in anonymous acts of retaliation. Unfortunately, recognition of those issues came after the complainant had initiated a lawsuit and after the workplace problems had been allowed to fester unabated for over three years. This complainant ultimately received a large jury verdict award as a result of the retaliation lawsuit.

REVIEW OF LITIGATION MATTERS

The OIG reviewed seven litigation matters involving allegations of retaliation. In only three cases⁵ was the OIG able to confirm that a formal complaint had been initiated to investigate the allegations of misconduct contained in the litigation. However, the OIG had concerns with the handling of those complaints.

As described above, in one case the employee's first complaint of retaliation by his supervisors was Withdrawn by the Chief of Police without being investigated, due to the Department's reliance on DFEH to conduct a formal investigation. However, DFEH closed its case without conducting an investigation. Therefore, those allegations were not investigated for two years when the employee filed his second retaliation complaint for vandalism to his mailbox. It took

⁴ A complaint was first initiated on the aggrieved employee's behalf when he filed a Department of Fair Employment and Housing (DFEH) claim alleging hostile work environment and retaliation for reporting misconduct. However, the complaint was Withdrawn by the Chief of Police, based upon the belief that DFEH was investigating the allegations. But, DFEH ceased their investigation shortly after the claim was filed when the complainant requested an immediate "right to sue" letter. Thus, neither DFEH nor the Department investigated the complainant's first allegations when they were made.

⁵ In another multi-million dollar case, the plaintiff testified she had complained earlier to a variety of Department entities, including PCDU and the Ombuds Office, about sexual harassment by her supervisor, but no formal complaint was initiated. Instead, when the employee returned to the Ombuds Office over a year later, after complaining of retaliation by the same supervisor due to her unfavorable testimony in unrelated litigation, rather than initiating a formal complaint, the Ombuds Office presented her with the alternative of transferring out of her unit or retiring at a certain paygrade. The only formal investigation the OIG could locate involving this employee was initiated against her upon return from stress leave, when she was accused of accessing confidential information from a computer. She was later terminated in connection with that complaint.

another ten months to complete this investigation, during which time the employee filed his lawsuit, as well as a third complaint alleging additional acts of anonymous retaliation.

In the second case, the plaintiff employee initiated a formal personnel complaint after complaining to no avail to both her captain and her bureau chief that her immediate supervisor, a lieutenant,⁶ was creating a hostile work environment for her by his attitude toward and treatment of females.⁷ Less than three weeks after making a complaint about her supervisor, the supervisor initiated a personnel complaint against her for failing to complete three rating reports prior to her end of watch, which resulted in her receiving a twenty-two day suspension. Three days after the complaint was initiated against her, she was given a three-paged "Notice to Correct Deficiencies" by the captain regarding her poor work performance, despite having received a commendation for her work three months earlier. The captain also asked her if she wanted to be loaned out to a different division while the complaint *she initiated* against her lieutenant alleging a hostile work environment was being investigated. She did transfer, claiming in her lawsuit she felt compelled to do so. Four months later, she met with the Commander of the Ombuds Office to discuss the retaliation she was experiencing. A day later, she received a call from the Ombuds Commander informing her that her old and current divisions were initiating the process to demote her. She was subsequently demoted.

The earlier complaint against her lieutenant, which initially alleged a hostile work environment, was later classified as an inappropriate remark and adjudicated as unfounded. In response to filing her lawsuit, the Department initiated a second complaint (CF #01-0864), in March of 2001. However, three months after that complaint was initiated, it was closed out by IAG as a duplicate and no investigation was conducted, even though the complaint included two additional accused employees, the captain and the deputy chief, who had not been named in her earlier complaint.

In a third litigation case, the Department initiated a personnel complaint in response to an employee report the plaintiff submitted alleging that a sergeant and training officer were creating a hostile work environment for him. That complaint (CF #98-3421) resulted in three counts of improper remark being adjudicated as not resolved against the training officer, but none of the allegations against the sergeant were addressed in the investigation. Ten months after initiating the investigation and less than a month before the complaint was adjudicated, the employee, who had since been terminated on probation, filed a federal civil rights lawsuit alleging age discrimination, naming as defendants the training officer, sergeant, and captain who adjudicated the complaint. However, the Department did not initiate an investigation into the lawsuit allegation for over a year after the lawsuit was filed. That later complaint was subsequently Withdrawn by the Chief of Police, prior to resolution of the litigation.

In the majority of these litigation matters, it appeared there were ongoing environmental and/or workplace issues which clearly contributed to the employee's perception of retaliation, but which

⁶ Though neither the lieutenant, captain, nor bureau chief were named as defendants in her later lawsuit, reference is made to all three throughout the civil complaint she filed in federal district court.

⁷ Interestingly, on the face sheet of this complaint, (CF #99-0948), the complainant specifically mentioned that she and this same captain had always had an "adversarial relationship," and that the captain did not like her based on negative comments allegedly made about her by another sergeant who was also accused in the same complaint. However, not only was the captain not added as an additional accused officer, but he investigated and adjudicated the complaint, even though he was, at a minimum, a witness to the accused sergeant's dislike for the complainant.

were neither properly investigated nor adequately addressed prior to the employee's initiation of litigation. For example, in several of these cases, the plaintiff employee perceived there to be a double standard at work. That is, when the plaintiff employee attempted to complain about supervisory misconduct, either no formal action was taken, the complaint was not sustained, or formal action was delayed to the extent that even if a complaint was sustained, only a "paper penalty" was imposed. However, when the plaintiff employee was accused of either misconduct or poor performance, often by the same supervisor the plaintiff accused of misconduct, the employee believed that the full weight of the Department's disciplinary system was brought upon him/her in a timely manner.

For example, in one high-dollar case described above, the plaintiff employee had made earlier allegations of sexual harassment against her supervisor, but no action was taken on her previous complaint for fifteen months, until she finally went to the Ombuds Office. However, when she was later accused of accessing confidential files from a computer hard-drive, she was terminated.

In another case described above, the plaintiff alleged he was the victim of retaliation by his supervisor. That supervisor had been the subject of two separate complaints involving racially insensitive comments and/or actions. While both these complaints were sustained, the supervisor never received any suspension days for either complaint.⁸ However, when the plaintiff was accused by this same supervisor of incorrectly taking credit on a Department log for locating a suspect who was a part of a multiple officer arrest in which complainant participated, a complaint investigation was initiated and initially sustained by the commanding officer. The plaintiff alleged that this complaint had been initiated by his supervisor as retaliation for the employee's prior complaints against the supervisor. Only after the plaintiff submitted two separate *Skelly* responses outlining how his actions were consistent with established policies and protocols for his particular unit was the employee ultimately exonerated.

This double standard seems to be explained in part by another common denominator the OIG noted amongst these litigation cases, and also in connection with the completed retaliation investigations reviewed: the perception that the employee in question was either "underperforming" and/or a "whiner" or "troublemaker." Thus, in most instances, it appeared that once that employee had been "branded," comments, questions, and concerns raised by the employee about improprieties in the disciplinary actions taken against him/her or misconduct committed by a supervisor or coworker were either entirely ignored or dealt with less seriously than complaints of misconduct or poor performance against the "branded" employee.

FINDINGS

In the complaint investigations and litigation matters reviewed, the OIG observed several instances in which the employee's supervisors and/or fellow employees made negative reference to the protected activity the employee had engaged in (filing a complaint, testifying against the Department, filing a lawsuit). The reference was made either directly to the employee or to other employees who then informed the complainant. In one complaint, an uninvolved employee heard the accused claim that if "someone" had not brought supervisory issues to the commanding officer's attention, certain employees would not have been transferred to undesirable

⁸ The supervisor received an "Admonishment" and an "Official Reprimand," respectively.

assignments (a thinly veiled reference to the complainant). In another instance, the employee received an anonymous message warning that he would pay for his "treachery."

As mentioned earlier, a number of the investigations failed to establish that the employee had been the victim of actual retaliation, but there were clear indications of environmental and/or workplace issues which contributed to the employee's perception of retaliation. However, most of the adjudications failed to recognize and address these environmental and/or workplace issues, including the supervisors' conduct in contributing to, addressing, and/or failing to prevent such issues. In the few adjudications that did evaluate and address workplace issues, such review and evaluation came too late at the end of an investigation, and/or after the aggrieved employee had already initiated litigation. Such failures allowed the workplace issues to continue unabated, further reinforcing the employee's perception of retaliation.

After reviewing these complaints and litigation matters, as well as in fulfilling its assigned role to investigate claims of retaliation which are brought directly to the OIG by aggrieved employees, the OIG has come to believe that there is a lack of understanding by supervisors of their responsibility not only to refrain from engaging in retaliation themselves, but also of their affirmative responsibility both to prevent acts of retaliation by employees under their command and to deal swiftly and severely with those who do engage in such acts.

At the conclusion of a complaint investigation alleging retaliation, if no misconduct is found, but the Department feels that there may be environmental and/or workplace issues that contributed to the filing of the complaint, further corrective or non-disciplinary actions should be recommended in the Department's LOT under the sections entitled "Workplace Issues" or "Training Issues." The information should contain the steps the Department is taking to ensure the subject workplace is free of retaliation or the perception thereof.

Overall, the OIG's review revealed that the LOTs prepared by commanding officers failed to document how involved supervisors may have addressed environmental and/or workplace issues. In addition, the OIG found that recommendations for specific training for supervisors who had been identified at least as partially responsible for the environmental and/or workplace issues were lacking in the LOTs.

In several complaint investigations reviewed, the OIG noted that even when environmental and/or workplace issues were apparent, they were not elaborated upon in great detail. In one case, the environmental issues which the investigation revealed clearly existed between two groups of employees were alluded to merely as "some tension and problems," with no specific plan as to how to address those problems other than a general suggestion that they would be handled through "continued . . . training."⁹ In another case,¹⁰ the environmental issues were referenced only in the general statement that "there obviously was some friction between [the complainant] and [the accused]."

Finally, the OIG has been unable to identify a formal mechanism in place to ensure that a "debriefing" is conducted with Department personnel after each large settlement or jury award to

⁹ CF #02-0148.

¹⁰ CF #02-2167.

determine what lessons, if any, can be learned and if any procedures should be implemented to avoid the recurrence of events similar to those which led to the large verdict/settlement.

Recommendations:

To address these concerns, the OIG makes the following recommendations:

1. Whenever a retaliation complaint is made, a specific Department entity - whether the Ombuds Office or some other unit – should be assigned to conduct an immediate workplace evaluation to provide enhanced oversight of the subject work environment. That evaluation should:
 - Recommend whether the accuser and accused should be separated while the matter is being investigated;
 - If separation is recommended, identify the person(s) who should be moved and whether assignment to different watches or a different command is appropriate;
 - Determine if appropriate proactive measures have been taken by the commanding officer and supervisors to prevent the matter from escalating; and,
 - Identify any remedial action necessary to address workplace issues.This evaluation should be conducted regardless of the ultimate outcome of the complaint investigation.
2. The results of that workplace evaluation and the actions taken in response to it should be documented at that time as well as in the subsequent LOT for the complaint.
3. Every LOT adjudicating a retaliation complaint must also address the measures taken, if any, at the time the complaint was made to prevent the situation from escalating. Those actions must be evaluated regardless of the complaint's outcome.
4. The Department's Annual Retaliation Report should include the findings of those workplace evaluations along with the status of each recommendation.
5. Any subsequent disciplinary action initiated by a supervisor towards an employee who has accused him/her of retaliation should be reviewed in consultation with a superior or commanding officer and/or the outside environmental assessment unit in an effort to ensure that such subsequent disciplinary action does not appear to be retaliatory.
6. Formal retaliation training should be provided to every Department manager and supervisor stressing their responsibility to proactively prevent retaliation or the appearance thereof and addressing it when it occurs. Such training should include:
 - The importance of ensuring that disciplinary and other actions are enforced equally, even if an employee is considered to be an "underperformer" or "troublemaker."
 - A supervisor's obligation to prevent and/or address derogatory references or other inappropriate actions against an employee who has either filed a claim or initiated litigation against the Department and/or Department employees.
 - The importance of ensuring fair and objective employee evaluations on an ongoing basis to avoid the appearance of retaliation.

7. Command officers must hold supervisors accountable for preventing and addressing retaliation, including formal documentation of supervisory performance in preventing and addressing retaliation. Command officers who fail to do so must similarly be disciplined.
8. The Department should institute a formal “debriefing” process after each large settlement or jury award to determine what lessons can be learned and what, if any, preventative measures should be implemented to avoid similar issues in the future.

Retaliation Claims

Obviously, the preceding recommendations presume that a retaliation complaint is being investigated by Professional Standards Bureau (PSB).¹¹ In some cases, aggrieved employees choose not to file a personnel complaint, and instead file claims directly with the Equal Employment Opportunity Commission (EEOC) or DFEH. Of the three cases in which the OIG determined that, prior to the initiation of litigation, a Department complaint was filed which initially alleged retaliation and/or hostile work environment, in two cases, the complaints were closed out as other than sustained as “improper remark” complaints, or, in the case described above, not investigated because of the perceived involvement of DFEH. Indeed, in the course of reviewing litigation cases, the OIG was unable to find a case in which a complaint investigation which adequately addressed the employee’s specific allegations of retaliation was thoroughly investigated and *completed* by the Department prior to the employee initiating litigation.

To enhance its commitment to eradicating and preventing retaliation, the Department must conduct a full, complete and thorough investigation of each and every retaliation complaint whether it comes to the Department’s attention as a personnel complaint, claim for damages or complaint filed with another agency.

Recommendations:

9. A copy of every retaliation claim for damages, lawsuit, and complaint filed with another agency should be forwarded to PSB and a personnel complaint initiated.
10. PSB should investigate every retaliation claim for damages, lawsuit, and complaint filed with another agency, regardless of any action another agency may take.

Ombuds Office and Police Commission Discrimination Unit

It is the OIG’s understanding that, in the past, when PSB’s investigation revealed that a complaint did not rise to the level of misconduct, PSB could refer the matter to the Ombuds Office for follow up. In referring the case to the Ombuds Office, the investigation could remain open until PSB received verification that the matter has been resolved. In cases where an impasse occurred and/or a resolution could not be reached, the case could be referred back to PSB for further investigation. When this occurred, the case could remain unresolved past the statute of limitations for imposing administrative discipline.

¹¹ Pursuant to Special Order Number 17, July 17, 2001, PSB is required to investigate all complaints of retaliation.

Similarly, in situations where a discriminatory environment and/or workplace was alleged not amounting to misconduct, PSB could refer the matter to the Police Commission Discrimination Unit (PCDU).¹² Once again, PSB's records could reflect that the original complaint was still open until such time as a resolution was reached by PCDU. After a lengthy investigation by PCDU, the matter could be referred back to PSB for further investigation, again holding the case open past the statute date.

One of the cases the OIG reviewed (CF #02-2167) was closed well beyond its statute date. We found that PSB's records showed the matter referred to the Ombuds Office for resolution. However, when we attempted to identify the resolution, the OIG learned that the Ombuds Office never received the file. Based on our inquiry, the case was referred back to PSB in May 2003 for investigation.

The concern here is that the more cases are referred to another entity for investigation, the greater likelihood the matter will fall out of statute or just "fall through the cracks" altogether. As a result, no one investigates these serious matters, or if they do and misconduct is ultimately identified, the statute of limitations may have expired leaving the Department with no corrective remedy. Worse yet is the message sent to Department employees as they watch their complaint being transferred from one entity to the next without a timely resolution. Consequently, those employees may seek and advise others to seek a legal remedy, as they perceive litigation to be the only option available to them.

Therefore, it is recommended that, in cases where PSB's investigation reveals that there is no misconduct, but rather there appears to be a need for a referral to the Ombuds or PCDU, these complaints should be closed out prior to being referred to either of these units. This would ensure that the accused employee(s) are afforded the benefit of having a concluded complaint reflected on their TEAMS, as well as ensuring that complaints are closed within the statute date. Prior to referring these cases to Ombuds or PCDU, however, PSB should forward the complaint information, along with thorough documentation and justification of its decision to the OIG, for a review of the appropriateness of the referral. Such a recommendation would ensure that a determination has been made that no significant misconduct has been alleged and/or demonstrated, and that a referral to PCDU or Ombuds to address environmental issues is appropriate.

Recommendations

11. In complaints where PSB's investigation reveals no misconduct but that a referral to Ombuds or PCDU would be appropriate, such complaints should be formally closed out by PSB prior to the referral to Ombuds or PCDU.
12. Prior to referring these cases to Ombuds or PCDU, PSB should forward the complaint to the OIG, along with thorough documentation justifying the referral, so that the OIG can ensure that all issues have been addressed and that the referral is appropriate.

¹² Refer to Special Order No. 17, dated July 17, 2001.

CONCLUSION

The OIG believes that the Department has an effective retaliation policy in place. However, the Department's implementation of that policy leaves room for improvement. In many cases, the Department takes too narrow an approach in its investigation of these complaints by failing to address environmental/workplace issues that may lead to a perception of retaliation.

Environmental/workplace issues, whether they come to the Department's attention in connection with the initiation of a personnel complaint or the filing of a DFEH or EEOC claim or a Claim for Damages, must be investigated thoroughly and completely. As demonstrated above, reliance on outside entities to complete that work has proven unsuccessful.

In addition, the Department must hold command officers and supervisors accountable for anticipating retaliatory situations and taking proactive measures to prevent such occurrences. The Department needs to track and evaluate command officers and supervisors whose actions and/or omissions may contribute to the creation of such environments, provide training to those identified as responsible for the creation of such environments, and, when necessary, take appropriate disciplinary action.

Summary of Recommendations

To facilitate review of this report, the recommendations made herein are as follows:

1. Whenever a retaliation complaint is made, a specific Department entity - whether the Ombuds Office or some other unit – should be assigned to conduct an immediate workplace evaluation to provide enhanced oversight of the subject work environment. That evaluation should:
 - Recommend whether the accuser and accused should be separated while the matter is being investigated;
 - If separation is recommended, identify the person(s) who should be moved and whether assignment to different watches or a different command is appropriate;
 - Determine if appropriate proactive measures have been taken by the commanding officer and supervisors to prevent the matter from escalating; and,
 - Identify any remedial action necessary to address workplace issues.This evaluation should be conducted regardless of the ultimate outcome of the complaint investigation.
2. The results of that workplace evaluation and the actions taken in response to it should be documented at that time as well as in the subsequent LOT for the complaint.
3. Every LOT adjudicating a retaliation complaint must also address the measures taken, if any, at the time the complaint was made to prevent the situation from escalating. Those actions must be evaluated regardless of the complaint's outcome.
4. The Department's Annual Retaliation Report should include the findings of those workplace evaluations along with the status of each recommendation.

5. Any subsequent disciplinary action initiated by a supervisor towards an employee who has accused him/her of retaliation should be reviewed in consultation with a superior or commanding officer and/or the outside environmental assessment unit in an effort to ensure that such subsequent disciplinary action does not appear to be retaliatory.
6. Formal retaliation training should be provided to every Department manager and supervisor stressing their responsibility to proactively prevent retaliation or the appearance thereof and addressing it when it occurs. Such training should include:
 - The importance of ensuring that disciplinary and other actions are enforced equally, even if an employee is considered to be an “underperformer” or “troublemaker.”
 - A supervisor's obligation to prevent and/or address derogatory references or other inappropriate actions against an employee who has either filed a claim or initiated litigation against the Department and/or Department employees.
 - The importance of ensuring fair and objective employee evaluations on an ongoing basis to avoid the appearance of retaliation.
7. Command officers must hold supervisors accountable for preventing and addressing retaliation, including formal documentation of supervisory performance in preventing and addressing retaliation. Command officers who fail to do so must similarly be disciplined.
8. The Department should institute a formal “debriefing” process after each large settlement or jury award to determine what lessons can be learned and what, if any, preventative measures should be implemented to avoid similar issues in the future.
9. A copy of every retaliation claim for damages, lawsuit, and complaint filed with another agency should be forwarded to PSB and a personnel complaint initiated.
10. PSB should investigate every retaliation claim for damages, lawsuit, and complaint filed with another agency, regardless of any action another agency may take
11. In complaints where PSB's investigation reveals no misconduct but that a referral to Ombuds or PCUDU would be appropriate, such complaints should be formally closed out by PSB prior to the referral to Ombuds or PCUDU.
12. Prior to referring these cases to Ombuds or PCUDU, PSB should forward the complaint to the OIG, along with thorough documentation justifying the referral, so that the OIG can ensure that all issues have been addressed and that the referral is appropriate.

APPENDIX A

CLOSED RETALIATION INVESTIGATIONS REVIEWED

Investigations Where the OIG Identified Concerns

CF #01-5363

The complainant in this case alleged that he was retaliated against by the accused supervisor in response to his being one of thirteen subordinates who filed a previous complaint against the accused supervisor for rude and discourteous behavior.

The complainant alleged that the accused followed him to the parking lot after hours, stood directly behind him breathing heavily and jiggling keys, and attempted to follow him home. The complainant also alleged that the accused had another employee tell him to get back to work, made corrections to his sign-in sheet, and completed a work schedule in which they both were listed as working on the same day, all after the accused had been advised by the commanding officer not to have any further contact with the complainant.

The Department completed its investigation slightly after the expiration of the one-year statute and determined that the allegations were unfounded. The OIG has been unable to identify any lawsuit filed by the complainant in this case.

Though, on the surface, the allegations in this case may not appear to rise to the level of misconduct, it is the OIG's opinion that they do raise concerns about the environment created by the accused employee. In the LOT, the commanding officer recognized that the accused employee needed some assistance in helping her develop her interpersonal skills. Ironically, within six months of the filing of this complaint, the accused employee received a second retaliation complaint from a different employee in her command which raised additional issues about her supervisory and interpersonal skills. This complaint, CF #02-2167, is discussed immediately below.

CF #02-2167

The complainant alleged that the accused supervisor took retaliatory actions against him because he made a complaint against the accused's friend. The alleged acts of retaliation by the accused were in the form of "freeway therapy" (transferring him to an undesirable location) and unfavorable ratings. One witness later recounted hearing the accused claiming that if "someone" had not brought supervisory issues to the commanding officer's attention, certain employees would not have been transferred to undesirable assignments (a thinly veiled reference to the complainant).

In reviewing the complaint form face sheet, PSB determined that the allegations did not constitute retaliation since the complainant alleged that the accused supervisor retaliated against him for a complaint he made against the supervisor's friend. Without conducting an investigation, PSB referred the investigation to the Ombuds Office. Upon follow up by the OIG, it was discovered that the Ombuds Office had no record of receiving the complaint. The OIG disagreed with PSB's initial assessment that the complaint failed to establish a *prima facie* allegation of retaliation. PSB reassumed investigative responsibility for this case in April 2003.

The OIG has reviewed the completed investigation, which resulted in two allegations of retaliation being unfounded, one against the supervisor originally named in the complaint above and another against her senior supervisor. The OIG's review revealed a number of problems.

With respect to the allegation that the two supervisors retaliated against the complainant for earlier reporting misconduct to the commanding officer by transferring the complainant to an undesirable location, there were legitimate business reasons for his transfer, and he was among a group of employees who were transferred around the same time.

However, with respect to the allegation that the supervisor retaliated against the complainant by calling him at home on a sick day and ordering him to bring a doctor's note upon his return, there is some evidence that the accused supervisor treated the complainant differently than other employees. The accused claimed she was following standard practice when she called him at home. However, at least four uninvolved employees indicated that the accused played favorites. Three witnesses claimed that the accused singled the complainant out for negative treatment, and two specifically claimed that the accused's calling the complainant at home to demand a doctor's note was inconsistent with her practice regarding other employees. The investigation, however, failed to resolve this apparent inconsistency.

Despite clear environmental issues in the unit and a clear lack of professionalism by one of the accused supervisors who has since resigned from the Department (apparently in response to a new complaint alleging that she filed a false police report), the LOT fails to address these issues adequately or suggest concrete solutions. The LOT merely states that, "there appears to be significant dissatisfaction with the Unit supervision" and makes a general reference to "[s]teps [which] are being taken to more fully examine and rectify this situation," without any specifics.

The OIG has been unable to identify any lawsuit filed by the complainant in this case.

CF #01-5250

The complainant in this case alleged that he was retaliated against by one of his supervisors for participating in an environmental audit of his unit, after the accused supervisor had allegedly asked him not to participate. The complainant alleged that the accused supervisor assigned him a higher number of investigations, gave him a negative reference in connection with the complainant's transfer to another division, gave him a less favorable evaluation than he had received in the past and precluded him from taking investigative trips out of the area.

The OIG has concerns as to the quality and completeness of the investigation, especially as it relates to omissions in the paraphrased statements versus the tape-recorded interviews. Moreover, the OIG had concerns about the "kid glove" way in which the accused employee was treated in his taped-recorded interview, including the investigator's failure to ask obvious follow up questions and to ask the accused about a number of specific issues raised by the complainant.

This investigation revealed clear environmental issues in the workplace. Those issues were addressed by the Ombuds Office and it appears that subsequent actions were taken to address those issues. Further, the LOT included a specific commitment that supervisors would receive additional training regarding the importance of keeping employee references confidential and the commanding officer promised to reinforce that retaliation in any form would not be tolerated.

However, the OIG concluded, based on the issues outlined above, that the investigation did not justify an unfounded adjudication.

On July 15, 2002, the complainant joined three coworkers to file a lawsuit against the City and the accused employee in state court. The OIG understands that this case was just settled in November 2003 for \$1,100,000. The OIG did not review this particular litigation in connection with this Report. However, one of the litigation matters the OIG did review involved allegations of racism, discrimination and hostile work environment against other supervisors in this same unit, and that case was settled in November 2001 for \$699,000.

CF #02-0148

The complainant in this case was a Custodial Service Attendant (CSA) assigned to the jail who was accused by a Department supervisor of altering his timesheet. The complainant notified his immediate supervisor and his union that the accused Department employee was overstepping her boundaries since the complainant was a General Services employee and not a Department employee. Additionally, the complainant alleged that the Department supervisor, in a separate incident, yelled at the complainant and directed him in a threatening manner to clean out a jail cell. When the complainant refused to speak with the Department supervisor without a union representative present, the Department supervisor allegedly had the complainant transferred to another jail facility.

Without even interviewing the accused, the Department unfounded the complaint by relying on a very narrow reading of the definition of retaliation, which limits retaliation to actions directed toward another Department employee. The Department determined that since the complainant was technically an employee of the General Services Department, the actions of the accused Department employee could not be deemed as retaliation. The OIG believes that had the complainant been a Department employee, the allegations on their face, if true, could have constituted retaliation. However, by failing to even interview the accused, the Department missed the opportunity to assess the propriety of the accused supervisor's actions.

On August 19, 2002, the complainant filed a lawsuit in federal district court against the City and the accused supervisor, alleging civil rights violations and employment discrimination. It is the OIG's understanding that the trial court just recently granted summary judgment in favor of all defendants and the matter was dismissed. It is unknown at this time whether the plaintiff will be appealing that decision.

CF #01-3834

The complainant alleged retaliation and discrimination. The complainant alleged that he was being retaliated against for reporting problems and disparate treatment among employees of different races in the command. The complainant alleged that when an employee of the same rank (who the complainant alleged was part of a clique of white employees including the commanding officer) was accused of improper ethnic remarks, that matter was handled via the alternate dispute resolution and was ultimately Withdrawn by the Chief of Police.

This investigation took over one year to complete, by which time two of the four accused employees had retired. The allegations of retaliation were unfounded, and the allegations of

discrimination were properly referred to the PCDU in April of 2002. As of the date of this writing, PCDU's investigation had not yet been completed.

After review of the case, the OIG concurs with the adjudication of the retaliation allegations. However, this investigation also identified workplace issues that were not addressed in the LOT. While they may be addressed in the PCDU investigation, the OIG believe that these issues should have been addressed in the LOT.

The OIG has been unable to identify any lawsuit filed by the complainant in this case.

CF #01-5349

The complainant alleged that that she was labeled a "troublemaker" and denied a promotional position because she made prior complaints against co-workers. The complainant claimed that she had been working in a desired position on an emergency appointment. But when that emergency appointment expired, she and another emergency appointment employee were asked to leave those positions and revert back to their previous positions.

The complainant stated that she never heard the accused supervisor refer to her as a troublemaker, but that the other emergency appointee allegedly heard those comments. However, the other employee stated that she did not actually hear the accused call the complainant a "troublemaker." Rather, she heard the accused indicate that the complainant may have caused problems in the past and that she may have had a "conflict" with another employee. According to the accused, the complainant was not picked for the promotional position because she did not score as highly as the other applicant. The other accused supervisor also indicated that another employee was chosen because he/she scored higher during the interview board for the promotional position.

Overall, the OIG does not disagree with the Department's decision to Unfound the allegations, since the only evidence of the allegation was a third-party conversation that appears to have been misinterpreted. Both employees believed there to be some bias against them from the accused supervisors since they had not been allowed to retain their emergency appointments. The OIG's review of this complaint revealed no evidence of retaliation on the part of either of the accused supervisors and no evidence of ongoing "environmental" issues.

However, one item of concern was the fact that the complaint was re-assigned to a new investigator one day before the statute expired. Even though the complainant had been interviewed seven months prior, neither the investigation nor taped interview could be located. The complainant was finally re-interviewed another three months later, and one of the accused was not interviewed for another month after that. Thus, what was a relatively simple investigation took nineteen months to complete.¹³

The OIG has been unable to identify any lawsuit filed by the complainant in this case.

¹³ Although the original investigation involved three accused employees, one employee was ultimately dropped from the complaint.

Investigations In Which the OIG Did Not Identify Concerns

CF #01-4535

The complainant alleged retaliation when the complainant attempted to “grieve” a comment card issued to the complainant. A use of force investigation and related excessive force complaint exonerated the complainant’s use of force, but it revealed that the complainant should have called for a supervisor. The complainant believed that the comment sheet was unwarranted, given that the use of force and related complaint had been investigated and adjudicated. The supervisor, on two occasions, attempted to rewrite the comment sheet to the complainant’s satisfaction with negative results. The complainant’s commanding officer then attempted to address the issue of the unsigned comment card with the complainant.

The OIG concurs with the outcome of this investigation. The complaint was closed as unfounded within the statutory period. There was no indication that this was anything other than an isolated incident. The OIG did not identify any lawsuit filed by the complainant in this case.

CF #01-5445

The complainant alleged that the accused supervisors coerced a false police report of domestic violence from his girlfriend and falsely arrested him for domestic violence.

It appeared that the actions of the complainant’s supervisors were completely warranted and appropriate given the criminal acts with which the complainant was charged, the conviction of the employee after a jury trial (which was upheld on appeal), and the employee’s later withdrawal of his earlier claims that the supervisor’s actions were related to the complainant’s prior filing of a discrimination lawsuit against the Department. (There was no indication that the supervisors had any knowledge of the prior discrimination lawsuit.) The complaint was adjudicated as “Other Judicial Review” and closed within the statutory period.

On January 25, 2002, the complainant filed a civil rights lawsuit against the City in state court. That case was dismissed on March 12, 2002, apparently without any settlement by or verdict against the City.

CF #01-3579

The complainant alleged that she was a victim of sexual harassment by her supervisor. The complainant also alleged that the supervisor retaliated against her for complaining about the sexual harassment by initiating a separate complaint of improper remarks, separating her from her regular partner, and relegating her to unfavorable assignments.

The complainant claimed she did not initiate a complaint sooner because she thought a lieutenant, who allegedly witnessed the incident, would initiate a complaint.¹⁴ The complainant claimed there were several people in the room when the alleged sexual harassment occurred.

The investigation revealed that the complainant did not initiate the complaint against the accused supervisor until after he had initiated a complaint against her and her partner regarding an alleged dating relationship between the two. The sexual harassment allegations were adjudicated

¹⁴ The complainant did not initiate a complaint until seven months later.

as unfounded due, in part, to the credibility and motivational issues of the complainant, the timing of her initiating the complaint, and inconsistencies in statements the complainant had made to two different investigators. Besides the complainant and her partner officer, there were no other identified witnesses to the alleged sexual harassment. It appeared that the complaint itself was motivated by retaliatory motives on the part of the complainant. This investigation did not reveal any environmental issues, and no lawsuits were filed in this case.

CF #02-2705

This case is related to the preceding case (CF #01-3579) and was initiated by a Protective League Representative (Rep) on behalf of an officer he was representing. The Rep claimed that the officer he was representing was being retaliated against for his participation in and support of the complainant in the preceding case when the Department initiated a complaint against this officer (CF #01-3578). However, the officer denied his Rep's allegation of retaliation, stating that he was unaware his Rep was going to initiate a complaint and that he did not want to initiate a complaint against the supervisor. The OIG believes this case was properly adjudicated as unfounded based on the officer's statement that he did not believe he was retaliated against, and that the complaint in which the officer was the accused – CF #01-3578 – was initiated two weeks prior to the initiation of the complaint in which he was a witness – CF #01-3579.

There were no unaddressed workplace issues and the OIG has been unable to identify any lawsuit filed by the complainant in this case.

CF #01-5335¹⁵

This investigation was initiated by the Department after an employee who had initiated litigation against the Department and a number of its supervisory and subordinate employees alleged that copies of his lawsuit were posted on a stationhouse internal door, a pair of pink women's underwear was left in his mailbox, and a copy of his lawsuit was anonymously sent via intradepartmental mail to another employee.

The allegations regarding the posting of the lawsuit and the leaving of the underwear in the mailbox were "Sustained - Unknown Employee," as the Department was unable to identify the involved employee. With respect to the allegation of sending the lawsuit via interdepartmental mail, the allegation was "Not Resolved." The Department did an admirable job of attempting to identify the person who sent the interdepartmental mail. The copy of the lawsuit was fingerprinted, with negative results. Although the accused employee admitted that the writing on the envelope was his, he denied sending the recipient a copy of the lawsuit in the envelope and explained that, in the past, he had sent the recipient a number of equipment requests via interoffice mail since he and the recipient usually worked different watches.

By the time this complaint was initiated, the environmental issues which had led to the employee's filing a lawsuit had been ongoing for some time, and the Department had both become aware of and begun to address these issues.

¹⁵ The employee in this case previously initiated a retaliation complaint, CF #01-0571, in which he claimed unknown employees removed his mailbox nameplate, as well as removing personal items from his mailbox. The complainant alleged these acts were part of a continuing pattern of retaliation against him. CF #01-0571 was not included anywhere in the Department's Report.

APPENDIX B

LITIGATION MATTERS REVIEWED¹⁶

Nagatoshi v. City of Los Angeles, et al., case no. BC260299

In October 2001, the Plaintiff, a Police Officer III assigned to Metropolitan Division's K-9 Unit, brought suit in state court against the Chief of Police, two deputy chiefs (no longer with the Department), one captain, three lieutenants, three sergeants, and a fellow police officer assigned to the K-9 Unit, for racial discrimination and retaliation. The employee claimed that he had been subjected to racial discrimination and harassment, as well as retaliation, in response to his complaints about the racial harassment to which he was subjected. The case was filed on October 9, 2001. On March 28, 2003, the jury returned a verdict against the City¹⁷ in the amount of \$3,591,000. It is the OIG's understanding that the City Attorney's Office is currently seeking appellate review.

Larry Jackson v. City of Los Angeles, case no. BC246214

The plaintiff, a sergeant at the time, claimed he was improperly denied a position as a Detective III with the Narcotics Unit based solely on the results of his third polygraph test, a prerequisite for selection to the Narcotics Unit. He filed a lawsuit in state court against the City of Los Angeles on March 6, 2001, alleging racial discrimination, retaliation and violation of the Americans with Disabilities Act. Among other things, the plaintiff claimed that a personnel complaint was belatedly initiated against him, resulting in his involuntary transfer and demotion, after he filed a grievance in connection with his non-selection for the Detective III position. On December 20, 2002, the case was settled for \$225,000.

Peter Vanson v. City of Los Angeles, case no. BC223499

The plaintiff, a Sergeant I, alleged that he was confronted by a lieutenant when he attempted to file a complaint regarding his non-selection to a Sergeant II position. He went off-duty due to stress and was admitted for a time to a mental hospital. After being returned to light (desk) duty, the Department initiated a worker's compensation fraud investigation against him, though nothing was found. On February 18, 2000, the plaintiff filed a complaint in state court against the City, alleging violations of the Americans with Disabilities Act, retaliation, and harassment. On January 14, 2002, the case was settled for \$275,000.

Judy Callan, Ken Lew, Andre Lowe, William Young v. City of Los Angeles, et al. case no. BC229014

The plaintiffs in this case were employees of the background unit who alleged that the defendant Sergeants had made racially discriminatory remarks against them and created a hostile work environment. They also alleged that they were afraid to complain for fear that the defendant Lieutenant would not be responsive to their complaints. One of the plaintiffs also alleged gender discrimination and that no accommodation was made for her to care for her developmentally disabled child. On July 17, 1999, the plaintiffs filed a complaint in state court. The case concluded on November 2, 2001, by a settlement in the amount of \$699,000.

¹⁶ Either settled for or jury verdict reached in the amount of \$150,000 or higher.

¹⁷ The City Attorney's Office had previously been successful in having all of the individually named defendants dismissed on summary judgment.

Theresa Schell v. City of Los Angeles, et al., case no. CV00-01454

The plaintiff alleged that she was retaliated against in response to her providing unfavorable testimony against the Department in connection with litigation regarding unpaid overtime. The retaliation included transferring her involuntarily and eventually terminating her. She also claimed that she had previously attempted to report sexual harassment by her supervisor, but that her complaint was not properly investigated. On February 10, 2000, the plaintiff filed suit in federal district court against the City, the Chief of Police, and the Ombuds Commander, alleging retaliation, gender discrimination, emotional distress, and wrongful termination. The case was settled for \$3,500,000 in lieu of an appeal after a jury returned a larger verdict.

Kenneth Daqdiqian v. City of Los Angeles, et al., case no. CV99-426

The plaintiff in this case was a fifty-seven year old probationary officer who was terminated prior to the completion of his probation. On March 23, 1999, he filed a federal cause of action for age discrimination and retaliation against the Police Chief, his training officer and a Sergeant (both of whom he alleged had created a hostile work environment for him), and the Captain of the division from which he was terminated. On December 31, 2002, the case was settled for \$495,000.

Diane Tostado v. City of Los Angeles, et al., case no. CV01-00116

The plaintiff in this case was a Sergeant II who claimed she was retaliated against by her lieutenant and her Captain, and eventually demoted after she complained that the Lieutenant had created a hostile work environment for her by his anti-affirmative action remarks. Three weeks after her initial complaint against the Lieutenant, he initiated a complaint against her for failing to complete three rating reports by her end of watch on a particular day. She eventually received a twenty-two day suspension for that complaint. She claimed she was also pressured by the captain to transfer to another division while the complaint she had initiated against her Lieutenant was pending. Four months after transferring to her new division and being told she would start with a clean slate, she was told that her old and current divisions were initiating the process to demote her, which they did. On June 12, 2001, she filed a complaint in federal district court alleging violation of free speech, retaliation, failure to prevent retaliation, negligent supervision, wrongful demotion and suspension, and intentional infliction of emotional distress against the City and the former Chief of Police. On October 16, 2002, that case was settled for \$1,250,000.

NOTE: Several retaliation related lawsuits were disposed of after the OIG's review. Those suits received much notoriety and involved substantial cash settlements. The issues raised in those later lawsuits only reinforced the Office of the Inspector General's concerns in this area.